

## 48A C.J.S. Judges § 273

Corpus Juris Secundum | August 2023 Update

### Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

### IX. Disqualification to Act

#### C. Grounds for Disqualification

##### 1. In General

##### d. Expression of Opinion

### § 273. Particular statements or expressions

[Topic Summary](#) | [References](#) | [Correlation Table](#)

#### West's Key Number Digest

West's Key Number Digest, [Judges](#)  49(2)

**Judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases ordinarily do not support a bias or partiality challenge.**

Judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases ordinarily do not support a bias or partiality challenge.<sup>1</sup> Expressions of impatience, dissatisfaction, annoyance, and even anger that are within the bounds of what imperfect men and women sometimes display do not create bias.<sup>2</sup> A judge's ordinary efforts at courtroom administration, even a stern and short-tempered judge's ordinary efforts at courtroom administration, are immune.<sup>3</sup>

A judge will not be disqualified to sit in a cause merely by expressing an opinion on a question of law involved in a case in the court.<sup>4</sup> Furthermore, a judge will not be disqualified by ruling on questions arising during the course of a proceeding,<sup>5</sup> by comments that are fair assessments of the evidence,<sup>6</sup> or by otherwise making statements or comments which are a necessary part of the performance of a judge's duty.<sup>7</sup> Thus, a court's questioning of parties as to their position does not alone constitute legally sufficient grounds for disqualification.<sup>8</sup>

An unnecessary expression by the judge of an opinion on the justice or merits of a controversy is not per se a ground for disqualification.<sup>9</sup> Also, statements of religious expression by a judge or remarks which suggest that the judge dislikes the crimes committed by a defendant do not necessarily evidence improper bias or prejudice.<sup>10</sup>

In the absence of bias or prejudice, a judge is not disqualified by a declaration of a belief as to the guilt of a person charged with an offense before the judge.<sup>11</sup> However, it has also been stated that speech of a trial judge indicative of a belief as to the accused's guilt is the antithesis of impartiality<sup>12</sup> and that a trial judge who expresses such an opinion before hearing any evidence may be disqualified.<sup>13</sup> As a general proposition, a statement by a trial judge that the judge feels a party has lied in the case is generally regarded as indicating a bias against the party.<sup>14</sup> However, a judge is not disqualified where the judge expresses an opinion on credibility as to a witness who is not a party,<sup>15</sup> at least in the absence of a showing of personal, as distinguished from judicial, bias or prejudice.<sup>16</sup> According to some authorities, once a judge declares that he or she believes a party or a witness has been deceitful, the judge cannot continue to preside in the role of impartial arbiter.<sup>17</sup>

A judge's criticism of the tactics and conduct of a party or counsel in the course of a trial,<sup>18</sup> or the judge's advising, solely in the interests of justice, a party or counsel as to how to conduct the case,<sup>19</sup> or the judge's advising the compromise of a suit,<sup>20</sup> does not provide ground for disqualification. Moreover, a judge's compliments in the course of legal proceedings should not ordinarily support a partiality challenge.<sup>21</sup> On the other hand, under statute, it has been held that a judge who directly or indirectly expresses approval or disapproval in open court of a jury verdict in any case tried before the judge is disqualified from trying such case in the event a new trial is granted.<sup>22</sup> However, the judge is not disqualified to pass on the motion for a new trial<sup>23</sup> or from imposing sentence upon defendant.<sup>24</sup>

### ***Separate trials of codefendants.***

A trial court judge presiding over the separate trials of two codefendants may not make a statement expressing bias or prejudice about the second codefendant during the earlier trial of the first codefendant.<sup>25</sup> However, where the trial court's statements merely consist of comments about a second codefendant as part of the consideration of mitigating factors during the sentencing of the first codefendant, recusal is not required.<sup>26</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

District court's characterization of defendants' position as being that one exoneree was a murderer and ought to be executed was not an unfair and prejudicial mischaracterization showing improper judicial bias in exonerees' § 1983 action against law enforcement officers, alleging that officers coerced them into signing fabricated confessions to rape and murder; testimony from one officer was introduced in which he made precisely that assertion, stating that he wished that the death sentence had been carried out for both exonerees. [42 U.S.C.A. § 1983. Gilliam v. Allen, 62 F.4th 829 \(4th Cir. 2023\).](#)

District judge's warning to attorneys that they should not repeat any non-starter arguments that were raised in prior illegal search cases against city unless they want to find themselves on the "short end of the stick with sanctions" did not raise a reasonable concern of judge's impartiality calling for his recusal in arrestees' actions against city for alleged illegal searches by city police officers; the warning fell into the category of ordinary courtroom administration and was made to avoid waste of time and distraction from the principal issues. [28 U.S.C.A. § 455\(a\). In re City of Milwaukee, 788 F.3d 717 \(7th Cir. 2015\).](#)

Trial judge's action and demeanor violated motorist's due process rights to impartiality, in motorist's negligence action against tow truck driver and towing company; judge made improper comments throughout summary-judgment hearing and took control of hearing as if he were advocate for defendants, thought lawsuit was waste of judicial resources, not important, and meritless, and was personally offended by lawsuit, and in summary-judgment order judge declared that civil litigation process was broken, proposed banishing insurance companies from courts and allocating costs aggressively for prevailing party, stated no rational person would have pursued claim of their own accord, and maintained that there were no set of facts showing defendants were negligent. [U.S. Const. Amend. 14. Chappey v. Storey, 204 N.E.3d 932 \(Ind. Ct. App. 2023\).](#)

Trial judge's statement, during preliminary hearing, about alleged victim's credibility did not reasonably call judge's impartiality into question, and therefore judge was not required to be disqualified in juvenile delinquency proceeding, where statement was based solely on the evidence

presented during the hearing, which expressed neither favoritism nor antagonism for either side. Neb. Code of Jud. Conduct § 5-302.11. [In re Interest of J.K.](#), 300 Neb. 510, 915 N.W.2d 91 (2018).

Bias of Family Court Judge unjustly affected result of proceeding to father's detriment, in proceeding arising from father's alleged willful violation of spousal maintenance and child support obligations which resulted in period of incarceration, where record reflected that Judge took an adversarial stance towards father and made numerous improper remarks to him, including that father symbolized everything that was "wrong with the world today," Judge made the matter personal by comparing father's experiences to Judge's own, and Judge committed father to four times the period of incarceration recommended by Support Magistrate. [Berg v. Berg](#), 166 A.D.3d 763, 88 N.Y.S.3d 248 (2d Dep't 2018).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 U.S.—[Liteky v. U.S.](#), 510 U.S. 540, 114 S. Ct. 1147, 127 L. Ed. 2d 474 (1994); [U.S. v. Adams](#), 722 F.3d 788 (6th Cir. 2013).  
  
Ill.—[Crown Mortg. Co. v. Young](#), 2013 IL App (1st) 122363, 371 Ill. Dec. 31, 989 N.E.2d 621 (App. Ct. 1st Dist. 2013), appeal denied, 374 Ill. Dec. 564, 996 N.E.2d 11 (Ill. 2013).  
  
Tex.—[Youkers v. State](#), 400 S.W.3d 200 (Tex. App. Dallas 2013).  
  
**A.L.R. Library**  
Prejudicial effect of trial judge's remarks, during civil jury trial, disparaging litigants, witnesses, or subject matter of litigation—modern cases, 35 A.L.R.5th 1.
- 2 U.S.—[Liteky v. U.S.](#), 510 U.S. 540, 114 S. Ct. 1147, 127 L. Ed. 2d 474 (1994); [In re O'Farrell](#), 498 B.R. 873 (Bankr. S.D. Ind. 2013).  
  
**Sentencing proceeding**  
The fact that a postconviction judge, in presiding at petitioner's capital sentencing proceeding, used emotional language in describing the petitioner's character and crime did not demonstrate a personal, disqualifying bias or prejudice outside of a judicial function.  
  
Ind.—[Lambert v. State](#), 743 N.E.2d 719 (Ind. 2001).
- 3 U.S.—[Liteky v. U.S.](#), 510 U.S. 540, 114 S. Ct. 1147, 127 L. Ed. 2d 474 (1994).  
  
Mo.—[McPherson v. U.S. Physicians Mut. Risk Retention Group](#), 99 S.W.3d 462 (Mo. Ct. App. W.D. 2003).
- 4 Tex.—[Roark v. Mother Frances Hosp.](#), 862 S.W.2d 643 (Tex. App. Tyler 1993), writ denied, (Feb. 9, 1994).  
  
W. Va.—[Judicial Inquiry Com'n of West Virginia v. McGraw](#), 171 W. Va. 441, 299 S.E.2d 872 (1983).
- 5 U.S.—[King v. U.S.](#), 576 F.2d 432 (2d Cir. 1978); [U.S. v. Conforte](#), 457 F. Supp. 641 (D. Nev. 1978), judgment aff'd, 624 F.2d 869 (9th Cir. 1980).

- Okla.—Oklahoma Co. v. O'Neil, 1968 OK 63, 440 P.2d 978 (Okla. 1968).
- 6 U.S.—Bin-Wahad v. Coughlin, 853 F. Supp. 680, 141 A.L.R. Fed. 697 (S.D. N.Y. 1994).  
Ala.—Ex parte Knotts, 716 So. 2d 262 (Ala. Crim. App. 1998).
- 7 U.S.—U.S. v. Anderson, 577 F.2d 258 (5th Cir. 1978); Smith v. Danyo, 441 F. Supp. 171 (M.D. Pa. 1977), judgment aff'd, 585 F.2d 83, 26 Fed. R. Serv. 2d 620 (3d Cir. 1978).  
**Sentencing**  
To a considerable extent, a sentencing judge is the embodiment of public condemnation and as the community's spokesperson can lecture a defendant as a lesson to that defendant and as a deterrent to others; accordingly, a court's derogatory statements to a defendant during sentencing ordinarily do not constitute a basis for recusal.  
Conn.—State v. Rizzo, 303 Conn. 71, 31 A.3d 1094 (2011), cert. denied, 133 S. Ct. 133, 184 L. Ed. 2d 64 (2012).
- 8 Fla.—Thompson v. State, 759 So. 2d 650 (Fla. 2000).
- 9 U.S.—Blizard v. Frechette, 601 F.2d 1217 (1st Cir. 1979).  
R.I.—Nelson v. Dodge, 76 R.I. 1, 68 A.2d 51, 14 A.L.R.2d 638 (1949).
- 10 Neb.—State v. Pattno, 254 Neb. 733, 579 N.W.2d 503 (1998).
- 11 U.S.—U.S. v. Williams, 569 F.2d 823 (5th Cir. 1978).  
Ill.—People v. Teller, 45 Ill. App. 3d 410, 3 Ill. Dec. 944, 359 N.E.2d 803 (1st Dist. 1977).
- 12 Mo.—McPherson v. U.S. Physicians Mut. Risk Retention Group, 99 S.W.3d 462 (Mo. Ct. App. W.D. 2003).
- 13 Ill.—People v. Williams, 272 Ill. App. 3d 868, 209 Ill. Dec. 354, 651 N.E.2d 532 (1st Dist. 1995).
- 14 Fla.—Louissant v. State, 125 So. 3d 256 (Fla. 4th DCA 2013), review denied, 2013 WL 6331711 (Fla. 2013).
- 15 Cal.—Blackwell v. Blackwell, 190 Cal. App. 2d 520, 12 Cal. Rptr. 201 (1st Dist. 1961).  
Or.—State v. Little, 249 Or. 297, 431 P.2d 810 (1967).
- 16 U.S.—U.S. v. Shotwell Mfg. Co., 287 F.2d 667 (7th Cir. 1961), judgment aff'd, 371 U.S. 341, 83 S. Ct. 448, 9 L. Ed. 2d 357 (1963).
- 17 Conn.—Ford v. Ford, 52 Conn. App. 522, 727 A.2d 254 (1999).
- 18 U.S.—U.S. v. Grinnell Corp., 384 U.S. 563, 86 S. Ct. 1698, 16 L. Ed. 2d 778 (1966); Charron v. U.S., 200 F.3d 785 (Fed. Cir. 1999).  
Mo.—In re D.C., 49 S.W.3d 694 (Mo. Ct. App. E.D. 2001).
- 19 U.S.—Martelli v. City of Sonoma, 359 F. Supp. 397, 23 A.L.R. Fed. 626 (N.D. Cal. 1973).  
Tex.—Brown v. American Finance Co., 432 S.W.2d 564 (Tex. Civ. App. Dallas 1968), writ refused n.r.e., (Dec. 4, 1968).
- 20 U.S.—In re Nevitt, 117 F. 448 (C.C.A. 8th Cir. 1902).

Ill.—*People ex rel. Holland v. DeMichael*, 79 Ill. App. 3d 974, 35 Ill. Dec. 188, 398 N.E.2d 1138 (1st Dist. 1979).

R.I.—*Nelson v. Dodge*, 76 R.I. 1, 68 A.2d 51, 14 A.L.R.2d 638 (1949).

21 U.S.—*Andrade v. Chojnacki*, 338 F.3d 448 (5th Cir. 2003); *Certain Underwriters at Lloyds, London v. Oryx Energy Co.*, 944 F. Supp. 566 (S.D. Tex. 1996).

22 Ga.—*Ingram v. Grimes*, 213 Ga. 652, 100 S.E.2d 914 (1957).

23 Ga.—*Johnson v. State*, 46 Ga. App. 494, 167 S.E. 900 (1933).

24 Ga.—*Ingram v. Grimes*, 213 Ga. 652, 100 S.E.2d 914 (1957).

25 Colo.—*People v. Cook*, 22 P.3d 947 (Colo. App. 2000).

26 Colo.—*People v. Cook*, 22 P.3d 947 (Colo. App. 2000).

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